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## NOTES OF INDIAN CASES.

PULUKURI KOTAYYA *v.* KING-EMPEROR, (1947) 1 M.L.J. 219 : L.R. 74 I.A. 65 : I.L.R. 1948 Mad. 1 (P.C.).

Two questions arose for decision in the above case. On the first point, the right of the accused to be furnished with copies of statements of the prosecution witnesses recorded by the police under section 162, Criminal Procedure Code, was fully recognised, and it was further pointed out that when such statements were in fact not made available to the accused " an inference, almost irresistible, arises of prejudice to the accused." In the case on hand, however, the statements were in fact made available but rather late, and there were circumstances showing that the accused were in fact not prejudiced. On that narrow ground it was held that the breach of the provision constituted an irregularity curable under section 537, Criminal Procedure Code. It was rightly pointed out that the distinction between an illegality and irregularity was one of degree rather than of kind, and that the breach of the proviso to section 162 did not *ipso facto* render the conviction illegal. But it is on the second point, as to the combined effect of sections 26 and 27 of the Evidence Act that the above decision is valuable authority. So far as Madras is concerned the view propounded by the Full Bench in *Athappa Goundan, In re*[1], has been applied for a decade. The said decision, which was rendered notwithstanding the preponderance of authority in the other Courts to the contrary, was rightly overruled by the Privy Council. The discussion in the judgment closely follows the terse analysis of the law by Muthuswami Iyer and Parker, JJ., in *Queen-Empress* v. *Commer Sahib*[2], which was good law for half a century till the Full Bench rendered its judgment. Courts should now have little difficulty in applying the correct test as to the extent of the admissibility of confessional statements when they are accompanied by discovery of material objects. An incriminating statement as to the use of the object will thus be effectively shut out, and the confession rendered admissible only to prove the fact discovered as also so much of the information as was the immediate cause of the discovery. And it is good that a restricted effect is given to the confessional statements recorded by the police which oftentimes are the result of the exercise of undue pressure, or the otherwise unknown quantity, " the persuasive powers of the police " referred to in the judgment.

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SRIMANTHU *v.* VENKATAPPAYYA, (1947) 1 M.L.J. 306 : I.L.R. 1948 Mad. 18 (F.B.).

In this case the Full Bench held that a Court to which a decree is sent for execution has no jurisdiction to order either attachment or sale of immoveable property in execution if at the time of the order the Court ceased to have territorial jurisdiction over the property. Both principle and authority are in favour of the above view. It was held in *Subbiah Naicker* v. *Ramanathan Chettiar*[3], that pending

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1. (1937) 2 M.L.J. 60 : I.L.R. 1937 Mad. 695 (F.B.).
2. (1888) I.L.R. 12 Mad. 153.
3. (1914) 26 M.L.J. 189 : I.L.R. 37 Mad. 462.

proceedings were transferred by operation of law on the occurrence of any change in territorial jurisdiction over the property with which they were concerned and this principle has been uniformly applied in later cases. (See *Rangamma* v. *Narasimhacharyalu*[1] and *Viswanatha Chetty* v. *Murugappa Chetty*[2].) No doubt the opinion expressed in *Subbiah Chettiar* v. *Ramanathan Chettiar*[3], that the Court passing the decree ceased to have any kind of jurisdiction was rightly negatived in the later Full Bench ruling in *Seeni Nadan* v. *Muthuswami Pillai*[4], but it is good law on the other point that the new Court has acquired jurisdiction by operation of law. See observations of Ramesam, J., in *Ramier* v. *Muthukrishnier*[5]. In fact the later cases have gone to the extent of holding that even in the case of a money decree it is the new Court within the jurisdiction of which the judgment-debtor lives that has got jurisdiction. See *Muthukaruppan Chetty* v. *Paiya Kavundan*[6]. It is easy to appreciate the distinction between the continuance of jurisdiction in the case of a suit and its cesser in the case of an execution petition, because in the former case the test of jurisdiction is applied at the date of the institution of the suit and the plaintiff is *dominus litis* while in the later case the continuance of power is linked up with the retention of territorial jurisdiction. And if the original Court itself loses jurisdiction to proceed by reason of the transfer it is *a fortiori* in the case of a transferee Court which has only a delegated or acquired jurisdiction. And the words of section 42 of the Civil Procedure Code to the effect that the new Court shall have the same powers as the original Court can hardly lend support to the contrary conclusion, as such a course will lead to the assumption of jurisdiction where none exists.

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VENKATADRI *v.* SESHACHARYULU, (1947) 1 M.L.J. 287 : I.L.R. 1948 Mad. 46.

In this case the property consisting of both varams in certain lands was shown to have been granted to a temple. But the archakas of the temple were in long and continued possession thereof and had apparently been appropriating the income at the same time defraying the expenses of worship. All the time there was a hereditary trustee functioning. The question arose whether the temple could recover possession of the properties from the archakas. The facts of the case take it clearly out of the line of cases where the grant is substantially to the archakas burdened with service. Nor is there anything to support the view that the archakas had any beneficial interest in the property or any right to surplus after meeting the expenses of worship. No doubt it will not be permissible to presume a breach of trust on the part of trustees or persons in a fiduciary position from the commencement of the grant; but equally there is nothing in the case on hand to show that there was an available surplus from the inception or that the same was appropriated by the archakas under any presumed right. The lands themselves were originally dry lands and the income was apparently sufficient to defray the expenses of worship. In any event there is no room for the application of the principle in *Attorney-General* v. *Wax Chandler & Co.*[7] that the surplus was intended to be conveyed to the archakas in the face of the express grant at the time of the Inam settlement to the temple. It is too much to split up the grant into two parts, one portion being a grant to the temple and the other to the archakas. See in this connection *Sundaraja Chariar* v. *Ethibar Khan Sahib*[8]. And again there can be no question of the acquisition of prescriptive title by the archakas. No doubt there is a difference between cases where the pujaris or archakas themselves have been trustees and cases where there are trustees along with the archakas. *Board of Commissioners for H.R.E. Board, Madras* v. *Veeraraghavalu*[9], falls under the former category, and is easily understandable as the archaka-trustee was undoubtedly occupying a fiduciary capacity. But even in cases where there has been a trustee functioning along with archakas it is too

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1. (1916) 31 M.L.J. 26.
2. (1917) 33 M.L.J. 750.
3. (1914) 26 M.L.J. 189 : I.L.R. 37 Mad. 462.
4. (1919) 37 M.L.J. 284 : I.L.R. 42 Mad. 813 (F.B.).
5. (1932) 62 M.L.J. 691 : I.L.R. 55 Mad. 801 (F.B.).
6. (1923) 45 M.L.J. 210.
7. L.R. 6 H.L. 1.
8. (1923) 44 M.L.J. 649.
9. (1937) 2 M.L.J. 368.

much to say that the archakas who entered into possession permissively and who have been right through paying rent or appropriating such rent for purposes of worship could prescribe against the temple during the perid of their occupation. This will flow from the other well-recognised rule that the tenant cannot prescribe against the landlord during the subsistence of the tenancy. It is not however on this ground that the decision is rested, but rather on the ground that the archakas could acquire no right by reason of the negligence of the trustees. Stated in that form the reasoning may be open to objection, because the negligence of the trustee will not prevent a third person from acquiring a title by prescription. And even the archaka could acquire such title if he had surrendered his possession and had entered into possession in his own right and in defeasance of the interests of the trust. The conclusion in the above case that the temple was entitled to recover the properties from the archakas who have no manner of title to the properties, was amply justified on the facts of the case.

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THIAGARAJA BHAGAVATHAR *v.* KING-EMPEROR, (1947) 1 M.L.J. 404 : I.L.R. 1948 Mad. 70.

The above case which had a sensational beginning at the trial stage had a somewhat tame end after the decision of the Privy Council. The accused were tried for conspiracy under section 120-B of the Indian Penal Code and abetment to commit murder under section 302 read with section 109 and were convicted on both charges and sentenced to transportation for life. The appellate Court allowed them to appeal on matters of fact as well of law under section 411-A, sub-section (1) (*b*) of the Criminal Procedure Code. But in rejecting the appeal the judges held that they should not upset the jury's verdict if there was material on which it could be based and if it did not appear to be unreasonable. (See In re *Thiagaraja Bhagavathar*.)[1] Reliance was mainly placed on the corresponding provision in the English Criminal Appeal Act of 1907. The Privy Council however had little difficulty in reversing the view of the High Court on this point. Their Lordships reiterated that it is dangerous to construe the Indian Act by reference to the English Statute however closely the language of the two Acts may approximate. They took the view that it was at the stage of the granting of leave that the Court should consider if leave should be given to appeal on facts and if such leave was given, it could not be delimited at the final hearing to a consideration of the appeal from the negative angle, namely, if the jury's verdict was perverse or unreasonable. It overrules the view prevalent in the Bombay High Court also on this point. The effect of the decision is undoubtedly to enlarge the scope of the enquiry at the final hearing where leave has been given to appeal on questions of fact; the Judges have to decide the case untrammelled by the jury's verdict or the Judge's summing up of the case.

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DEVADAS *v.* SADASIVA REDDIAR, (1947) 1 M.L.J. 333 : I.L.R. 1948 Mad. 103.

Suits of redemption form a special class of suits under section 7 (*ix*) of the Court-Fees Act and the valuation thereof is on the basis of the principal money expressed to be secured by the deed of mortgage. The principle of valuation prescribed herein is open to serious objection. Even if a major portion of the mortgage money has been paid the mortgagor will have to pay court-fee on the full amount secured. On the other hand even if much larger sums have accrued by way of interest and even though the suit is in substance one for getting rid of the money charge the plaintiff is enabled to pay court-fee without any reference to the amount due. In so far as it is a suit to get rid of a money claim charged on the property the logical course will be to regulate the court-fee according to the amount of charge which is sought to be got rid of. It can hardly be said in such cases that the subject-matter of the suit is the property itself, as the valuation is not prescribed with reference to the value of the property. But the section has

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1. (1946) 1 M.L.J. 42 : I.L.R. 1946 Mad. 389.

stood there for nearly eighty years and it is a matter for the Legislature to suitably amend the same. As it stands, the view that the claim to surplus profits form a part of the suit for redemption and need not be separately valued is not only well settled but is logical. And if surplus profits need not be separately valued the Chief Justice rightly asked why should surplus deficiencies as in the case on hand stand on a different footing? In form and substance the suit is one for redemption and all other reliefs sought in working out the rights of the parties can only be ancillary to the main claim.

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SOMASUNDARAMMA *v.* SESHAGIRI RAO, (1947) 1 M.L.J. 292 : I.L.R. 1948 Mad. 109.

On the point as to the applicability of Order 9, rule 9, Civil Procedure Code, to the facts of this case the Court gave effect to the principle enunciated by the Full Bench in *Pichamma* v. *Sreeramulu*[1]. On the other point it was held mainly relying on *Muthiah Chettiar* v. *Govinddoss Krishnadoss*[2] that when the Court wrongly acts under an appealable provision of law and passes an order which, having regard to the provision of law under which it is passed, is appealable, an appeal will lie even though the order should have been passed under a provision of law which would not carry with it a right of appeal. In such cases it will be difficult to ignore the decree as it stands and to say that the Court should have passed an order under a provision of law which was not appealable.

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*In re* CHENCHIAH, (1947) 1 M.L.J. 191 : I.L.R. 1948 Mad. 133.

In this case the petitioners were arrested by police officers in the morning on a particular day and the order for their detention was sought to be supported by an Ordinance which was promulgated later in the day. It was contended on their behalf that the arrests were illegal because at the time of the arrests the Ordinance had not become law. It was held however that the Ordinance could be deemed to have had effect from the midnight of the previous day and consequently that it was in operation when the petitioners were arrested. Reliance was mainly placed on In re *Court-Fees*[3]. In that case the majority took the view that the notification regarding the increase in the levy of court-fees on the Original Side took effect from the earliest portion of the day while Kumaraswami Sastri, J., held against that view. The discussion there turned on the effect of the word "from" in the notification. In the case on hand the effect of the decision is to retrospectively validate the detention. It is a very large proposition to say that the accused can be brought within the letter of the penal law before the Act is so much as promulgated, and it was admitted in this case that the Ordinance was not promulgated till the notification was put up. It is not as if this aspect of the case was not present in the minds of the learned Judges who decided the above case.[4] But they held nevertheless that the arrests of the petitioners were not rendered illegal on that ground. When it is recognised that an illegal detention cannot be retrospectively validated, it would be well if the Court had applied the rule that an accused cannot be brought within the letter of the law except by plain language or by plain intendment. All discussion as to *terminus a quo* of an Act is beside the point where as in the case on hand the Ordinance was as admitted by the prosecution promulgated subsequently. It would have been better if their Lordships had given effect to the second principle enunciated in the judgment and given the benefit of doubt regarding the penal provision to the petitioners.

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1. (1917) 34 M.L.J. 24 : I.L.R. 41 Mad. 286 (F.B.).
2. (1921) 41 M.L.J. 316 : I.L.R. 44 Mad. 919 (F.B.).
3. (1922) 45 M.L.J. 557 : I.L.R. 46 Mad. 685 (S.B.).
4. *See* the discussion at p. 138.

VELLAYAN CHETTIAR *v.* GOVERNMENT OF THE PROVINCE OF MADRAS, (1947) 2 M.L.J. 208 ; L.R. 74 I.A. 223 : I.L.R. 1948 Mad. 214 (P.C.).

Before the decision of the Board in *Bhagchand Dagadusa* v. *Secretary of State*[1], there were decisions of Courts in India to the effect that a notice under section 80, Civil Procedure Code, given by only one of two plaintiffs would be a sufficient compliance with the section. Since then it has been well settled that there should be identity of the person who issues the notice with the person who brings the suit. To put it conversely, the notice is invalid where there is no such identity. This is the decision of the Privy Council on the first point and there is nothing new about it. But it is on the point of waiver that the decision under reference is valuable authority. In fact quite a number of cases were decided in India where divergent views have been taken on the question of waiver. For instance, in the judgment appealed against, *Government of Madras* v. *Vellayan Chetti*[2], the High Court had taken the view that there could be no such thing as waiver or estoppel in such cases. On the other hand in certain other cases it had been held that the party in whose favour the section prescribes notice can waive his right to the notice. (See *Hira Chand* v. *Kashinath*[3] and *Secretary of State* v. *Sagarmal Marwari*[4].) This controversy has been set at rest by reason of the above decision, where it was pointed out that there was no inconsistency between the propositions that the provisions of the section are mandatory and must be enforced by the Court, and that they may be waived by the authority for whose benefit they are provided. Whether in fact there was waiver in a given case will turn on the facts of the case. In the case on hand it was held that the mere omission to raise the objection at the earliest stage did not constitute waiver. As Lord Simonds observed "They (defendants) might have been negligent in their own interest in not raising the plea at an earlier stage, but negligence cannot give rise to an estoppel unless there is a duty of care."

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RAMAKRISHNAN CHETTIAR *v.* RADHAKRISHNAN CHETTIAR, (1947) 2 M.L.J. 72 : I.L.R. 1948 Mad. 263.

In this case a Bench of the High Court overruled the earlier rulings of two single Judges, see *Satyanarayana Rao* v. *Purnayya*[5] and *Ranga Rao Naidu* v. *Janaki Prasad*[6] and held that the power of the Court under sections 151 and 152, Civil Procedure Code, could not be exercised so as to amend or correct the error as to description of the property described in the mortgage deed which formed the subject-matter of the suit. No doubt the power of the Court to amend the description of property in the plaint or in the decree has been well recognised since the decision of Best and Muthuswami Iyer, JJ., in *Narayanaswami* v. *Natesa*[7]. But the real controversy has arisen as regards the power of the Court to amend a mistake which had an origin *anterior to the filing of the suit.* On this point, logic is undoubtedly in favour of the view taken in the above case. In the case of deeds, there is the remedy of rectification recognised by section 31 of the Specific Relief Act. And there is no reason why a party who has not availed himself of the remedy should be enabled to invoke the somewhat undefined powers of the Court under section 151 or 152 of the Code. If the judgment based on the plaint is correct in form, and if the decree is in accord with the judgment, rule 3 of Order 20 forbids the Court from interfering with the same unless the case falls within section 152. And the latter section can hardly have any application when it is recognised that the error is not in the proceeding or suit but in some anterior deed. All rules as to forms and procedure will be rendered otiose if parties or the Court could in the guise of doing substantial justice between the parties set right all possible mistakes that parties might have committed at some stage. In fact the correct procedure

1. (1927) 53 M.L.J. 81 : I.L.R. 51 Bom. 725 (P.C.).
2. (1944) 2 M.L.J. 65 : I.L.R. 1945 Mad. 263.
3. A.I.R. 1942 Bom. 339.
4. (1941) I.L.R. 20 Pat. 394.
5. (1930) 61 M.L.J. 805.
6. (1941) 2 M.L.J. 452.
7. (1892) I.L.R. 16 Mad. 424.

in such cases was indicated in *Latchayya* v. *Seethamma*[1]. It does not appear if the latter case was brought to the notice of the learned Judges who disposed of the above case. There are no doubt limits after which rectification of a deed cannot be made. Thus third parties might have acquired rights ; or the decree under the unrectified instrument might have been put in execution and the money recovered. In all such cases either the decree-holder has obtained the fruits of his decree or he has not. If he has, he cannot subsequently invoke the power of the Court to amend. If on the other hand the decree has not been realised it will be open to him to apply for rectification subject to the condition as to the rights of third parties prescribed by section 31 of the Specific Relief Act. As it is, neither considerations of hardship nor of setting right a mutual mistake of parties would seem to warrant a conclusion different from the one arrived at in the above case.

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RAMAMURTHY *v.* KANAKARATNAM, (1947) 2 M.L.J. 281 : I.L.R. 1948 Mad. 335.

The somewhat wide language which the Legislature adopted in the amendment introduced in section 39 of the Transfer of Property Act in 1929 caused apprehension lest it should affect even transfers for family necessity when there are persons having claims to maintenance out of the family property. Under the old section two things were necessary to defeat such transfers : first, an intention on the part of the transferor to defeat the maintenance right, and secondly, the transferee should have had notice of the maintenance claim and of the fraudulent intention of the transferor. Even the old section was not happily worded, as Beaman, J., pointed out in *Yamunabai* v. *Nanabai*[2] and proof of fraudulent intention on the part of the transferor was by no means easy. In a Hindu joint family, the unmarried sister, the widow of a deceased coparcener and his unmarried daughter have each of them a right to be maintained out of the family estate. Such a right is not a charge on the estate unless so made by agreement or by decree of Court. There is no limitation for enforcing such a right so long as it is not denied. If the effect of the amending section was to postpone the right of the purchaser for value to that of a maintenance-holder if the former had simply notice of the claim that would undoubtedly be going too far and will render transfers by Hindus in general hazardous. And if that were the law the fact that the remainder of the estate in the family is sufficient to meet the claim for maintenance would be immaterial. The decision of the Bombay High Court in *Dattatraya* v. *Tulsabai*[3] undoubtedly contains observations putting a heavy burden on the purchaser in such cases. The fact that the learned Judges did not purport to modify the law as set out in *Lakshman Ramachandra* v. *Satyabamabai*[4] is immaterial, for the learned Judges were concerned with the effect of the amendment and not the anterior law. In the later case of *Pranlal* v. *Chapsey*[5], Chagla, J., recognised the right to sell the family property for binding necessity which would have the effect of postponing the right of the maintenance holder. The case in *Mst. Dan Kuer* v. *Mt. Sarala Devi*[6] presented comparatively little difficulty as there was a charge in that case and the transferee had also notice thereof. It is really in cases where such a charge has not been created that the effect of the section becomes material. In *Pavayamal* v. *Samiyappa Goundan*[7], it was held by a single Judge that what section 39 contemplates is a claim based on the right to receive the maintenance and notice of such a claim. In the case on hand the force of the section was effectively whittled down and it was held that any binding alienation will remain unaffected by the claim for maintenance. It was pointed out that the amendment was intended to deal only with transfers which did not come within the Hindu Law rule of alienations for necessity. While the conclusion arrived at is wholly welcome in that it removes what may possibly be a bugbear in the case of transfers by Hindus it is a little difficult to say that the section itself contemplates two different kinds of transfers. The legal weakness

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1. (1931) 62 M.L.J. 350.
2. (1910) 12 Bom.L.R. 1075.
3. I.L.R. 1943 Bom. 646.
4. (1877) I.L.R. 2 Bom. 494.
5. I.L.R. 1945 Bom. 649.
6. (1946) 2 M.L.J. 420 (P.C.).
7. (1947) 1 M.L.J. 329.

of this distinction will become even more clear when it is borne in mind that the present Act does not expressly save Hindu Law, and therefore the Act will take effect. To assume that transfers under the personal law would be saved from the operation of the section may not be wholly logical. In any event, the controversy over the effect of section 39 of the Transfer of Property Act is not likely to be set at rest in the absence of an authoritative pronouncement by the highest Court of the land. If such a decision should turn out in favour of the maintenance holder the only remedy will then lie in legislative amendment.

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SHANMUGHA MUDALIAR *v.* RATHINA MUDALIAR, (1947) 2 M.L.J. 241 : I.L.R. 1948 Mad. 482.

The above case was referred by Rajamannar, J. (as he then was) to a Division Bench as there was a conflict of view on the point and the learned Judge preferred the opinion of Beaumont, C.J., in *Appaya Nijlingappa* v. *Subrao Babaji*[1] to that of Bell, J., in *Ponnappa Chettiar* v. *Bodappa Chettiar*[2]. In the latter case the learned Judge came to the conclusion that when an unregistered partnership has been dissolved any contract made with the partnership or moneys due to it in respect of dealings during the subsistence of the partnership cannot be enforced by a suit. The above view assumes that an unregistered firm is either illegal or that it cannot enter into valid contracts. The unregistered firm can in fact be sued upon and there is nothing to prevent the firm from entering into contracts. And the dissolution of the firm should place the unregistered firm and the registered firm in much the same position as regards the realisation of their assets. And this is the effect of sub-clause (3) of section 69 of the Partnership Act, which apparently escaped the attention of the Judge in *Ponnappa Chetty's case*[2]. The other reason adduced in favour of the conclusion arrived at by the Division Bench was that consequent on the dissolution the firm could not overcome the disability as to registration. This will not perhaps be a compelling reason as that assumes that a party is always provided a remedy to get over a legal obstacle which is in his way. The real reason of the rule is that based on clause (3) that parties can do what they are not forbidden from doing under the law.

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MADDULETI REDDI *v.* RAHIMAN BI, (1947) 2 M.L.J. 585 : I.L.R. 1948 Mad. 560.

In this case the effect of the decision of the Full Bench in *Perumal Pillay* v. *Perumal Chetty*[3] was considered and it was held that the latter decision should be confined to cases where after the preliminary decree a party dies and no legal representatives are impleaded in time. In those cases in as much as there is a determination of the rights of the parties the proceedings could go on to the stage of a final decree. But in the case on hand the question arose in the case of a pending appeal against the final decree and it was rightly held that there could

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1. I.L.R. (1938) Bom. 102.
2. (1944) 2 M.L.J. 406.
3. (1928) I.L.R. 51 Mad. 501 (F.B.).

be no question of the ordinary rule of abatement not applying. To hold otherwise would render the rules as to abatement nugatory in such cases. It was also pointed out in the above case that the High Court has a larger discretion in applying rules as to abatement to Civil Revision Petitions than in the case of appeals which are specifically provided for in rule 11 of Order 22, Civil Procedure Code.

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Sankaranarayana Pillayan and others *v.* Board of Commissioners for Hindu Religious Endowments, Madras, (1947) 2 M.L.J. 315: L.R. 74 I.A. 230: I.L.R. 1948 Mad. 585 (P.C.).

There is a very large volume of case-law on the subject which came up for decision in the above case. The question was whether the grant of lands for the kattalai were absolute to the deity or if the kattalaidars had a right in the available surplus income, or to put it in other words, if the grant itself was in the nature of a charge for the kattalai expenses. In the case on hand the grant of the lands was as Devadayam or gift to God and there was apparently no evidence that there was a surplus at all times or that it was appropriated as of right by the kattalaidars. If there was a surplus from the commencement of the trust and if in fact the same had been appropriated by the trustees personally it will be too much to say that the appropriation of the surplus was in breach of trust and probably the reason of the rule in *Attorney-General* v. *Wax Chandler's Co.*[1], may successfully be invoked. It will be too much to say that there should be a specific or express direction for appropriation of the surplus. If the objects of the trust are defined and even in the first instance they consume only a part of the income it will be difficult to ignore the actual appropriation of the surplus by the trustees and treat it as constituting a breach of trust. But in the case on hand there was no evidence as to the initial mode of enjoyment and further as the Board pointed out there was the peculiar feature that " throughout the long and varied history of the endowment no claim was ever made to a beneficial enjoyment of the surplus income though several opportunities arose for making such a claim." In such cases the right to the surplus does not flow from the usage ; in fact the usage is evidence of the original grant. No doubt the property constitutes the subject of the grant, but even then if the objects are defined as in the case of a kattalai and there is admittedly a surplus from the inception it will be too much to say that nonetheless the entire income should be funded or that rules of *cypres* should be given effect to. It cannot possibly be said that the consciousness of the Hindu community is against the kattalaidar being enabled to retain a right to the surplus in himself. As such surplus may be fluctuating it may not be a defined right in property, nor can it be the subject matter of adverse possession. But cases may be easily imagined where the right to property being ostensibly vested in the temple there is a right to the surplus income conferred on the kattalaidars., The decision in this case should rather be taken as not falling under this category than as excluding the possibility of such rights being vested in kattalaidars.

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1. L.R. H.L. 1.